

Leonard F. Joy
Executive Director

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Southern District of New York
John J. Byrnes
Attorney-in-Charge

March 18, 2008

VIA HAND DELIVERY

Honorable Harold Baer
United States District Judge
Southern District of New York
United States District Court
500 Pearl Street
New York, New York 10007

RECEIVED
MAR 19 2008
HAROLD BAER
U.S. DISTRICT JUDGE
S.D.N.Y.

Re: United States v. Jordan Desenberg
07 Cr. ~~386~~ (HB)
401

Dear Judge Baer:

MEMO ENDORSED

I write at the request of my client Jordan Desenberg to respectfully request a five-week adjournment of his sentencing date of March 20, 2008.

Mr. Desenberg is facing a mandatory minimum sentence of five years' incarceration and the Presentence Report recommends that the Court apply an advisory sentencing guidelines range of 135-168 months. The defense disagrees with that guideline calculation, as Mr. Desenberg's prior counsel made clear at his guilty plea, and believes the appropriate guideline range is actually 70-87 months.

The defense requests the adjournment for two reasons: the first based on the attached report of Dr. Alexander Sasha Bardey and the second based on the need to subpoena correspondence from America Online.

Dr. Bardey's Report

As part of its presentence investigation, the Probation Department had Mr. Desenberg evaluated by a social worker. The social worker's report was sent to the parties on January 22, 2008. The next day, I wrote to the Court requesting permission to have Mr. Desenberg evaluated by Dr. Bardey, a psychiatrist

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retained by my office.¹ My office had made arrangements to have Dr. Bardey evaluate Mr. Desenberg on January 28, 2008, but needed the Court's permission because Mr. Desenberg is incarcerated. The Court granted my request on February 4, 2008. At that point, the evaluation of Mr. Desenberg had to be rescheduled.

Dr. Bardey's report was finalized yesterday, March 17. A copy of his report is attached as Exhibit A. I visited Mr. Desenberg at the MDC yesterday and again this morning and, in the interest of allowing the Court and the parties time to consider Dr. Bardey's report, he asked me to request an adjournment of the sentencing date.

America Online Subpoena

It has become clear to the defense that it will need to subpoena America Online ("AOL") to obtain a copy of correspondence between Mr. Desenberg and AOL that Mr. Desenberg feels strongly the Court should see prior to imposing sentence. The government has informed me that, at this time, it is unable to provide the defense with more than the header of the correspondence from Mr. Desenberg's hard drive. I am in the process of preparing a Rule 17(c) subpoena I will submit to the Court with a request that it be so-ordered. I plan to request AOL's compliance with the subpoena within two weeks.

A five-week adjournment would allow for two weeks for compliance with the subpoena, one week for the defense to finalize its sentencing memorandum based on the results of the subpoena, one week for the government to respond to the defense submission, and one week for the Court to consider all of the materials prior to determining the appropriate sentence in this case.

I apologize to the Court for this additional, belated adjournment request and assure the Court that my client and I feel the adjournment is necessary in order to effectively present Mr. Desenberg's position at sentencing, especially considering

¹ I had previously made this request of the Court, and my office had arranged for Mr. Desenberg to be evaluated on December 4, 2007, but I was advised that the Court preferred me to await receipt of the social worker's report prior to seeking permission for the doctor's evaluation.

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the enormous difference between the sentence recommended in the PSR and the sentence the defense thinks is appropriate. We thank the Court for its patience and for its consideration of this matter.

I have spoken with Parvin Moyne, the Assistant United States Attorney assigned to Mr. Desenberg's case, and she has informed me that the government consents to my adjournment request.

Respectfully submitted,

Peggy M. Cross

Peggy M. Cross
Assistant Federal Defender
Tel.: (212) 417-8732

cc: Parvin Moyne, Esq. (via facsimile)

*I have read the report.
I see no reason to adjourn
the sentence again. You had
ample time to subpoena records.
If your client asks for an
adjournment let him tell me
in person. Denied*

RECORDED

Harold Baer, Jr.
Harold Baer, Jr., U.S.D.J.

3/19/08

Endorsement:

I have read the report. I see no reason to adjourn the sentence again. You had ample time to subpoena records. If your client asks for an adjournment let him tell me in person. DENIED